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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,784	05/22/2006	Roger Le Comte	284302US6PCT	3618
22850 7590 12/29/2010 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER HANDY, DWAYNE K				
ART UNIT 1773		PAPER NUMBER		
NOTIFICATION DATE 12/29/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/564,784

Applicant(s)

COMTE, ROGER LE

Examiner

DWAYNE K. HANDY

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-35, 37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-24, 27-35, 37 and 38 is/are rejected.
- 7) ☒ Claim(s) 25 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/10/10 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 19-24, 28-35, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischer et al. (5,646,046).
4. Claims 19-24, 28-35, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Ammann et al. (6,335,166).

This reference contains the same teachings as the previously cited "Burns" reference but has an earlier publication date making it available as prior art under 102(b). These rejections were applied in the previous Office Action. They remain in effect and include new claims 37 and 38.

Response to Arguments

5. Applicant's arguments filed 08/10/10 have been fully considered but they are not persuasive.

6. Applicant has argued that the references do not teach a blood analyzer including means for analyzing patient blood samples and a quality control device including means for storing by refrigeration *control bloods*, means for restoring the *control bloods* to a temperature prescribed by a manufacturer of the *control bloods*, means for stirring the *control bloods* for re-suspension of cells, and means for sampling the *control bloods*. By contrast, Fischer merely describes a sample handling system.... Page 8, Fischer and Page 9, Burns).

7. The Examiner submits the italicized portion directed to the control bloods is an intended use phrase. As discussed during the interview, the Examiner has treated the means language as means-plus-function language under USC 112, 6th Paragraph - but the Examiner still contends phrase control bloods is an intended use limitation. See previous action, Paragraphs 4 and 5. In addition, Applicant's Specification provides passages which allow for quite a broad reading of these elements. The Specification states that other suitable devices may be used to perform the functions described. Therefore, the elements from Fischer and Burns/Ammann cited in the previous Actions

meet the structural limitations of the claims. The additional phrase is directed to an intended use of those elements with control blood.

8. Applicant has also argued that neither reference teaches a separate quality control device. This argument is beyond the scope of the claim as written. The claim as written recites the broad limitation of a "quality control device including, means for storing... means for restoring ...means for stirring". Therefore any device that contains these elements meet the limitation of the "quality control device".

Allowable Subject Matter

9. Claims 25 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As discussed during the Interview on 08/09/10 and argued by Applicant on pages 10-11, the feature of the inversion block is not taught not suggested by the prior art. The Examiner stated during the interview that if Applicant amended the claim so that the rocking limitation was eliminated, the claim would contain allowable subject matter.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DWAYNE K. HANDY whose telephone number is (571)272-1259. The examiner can normally be reached on M-F 11:00-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dwayne K Handy/
Examiner, Art Unit 1773
December 19, 2010